IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL.

(Court's order whether the case is approved for reporting or not)
[Chapter VIII Rule 32 (2)(b)]

Description of Case

Writ Petition No. 1635 (S/S) of 2004

Rama Shankar Singh
Son of Sri late Sri Raghu Nath Singh,
Resident of 651 /2, Chakeri,
Pant Nagar,
District - Udham Singh Nagar. **.....Petitioner.**

V e r s u s.

1. State of Uttaranchal through Secretary, Agriculture, Government of Uttaranchal, Dehradun.

2. Vice Chancellor, G.B. Pant University of Agriculture and Technology, Pant Nagar, District- Udham Singh Nagar.

3. Dean, Student Welfare, G.B. Pant University of Agriculture and Technology, Pant Nagar, District - Udham Singh Nagar.

.....Respondents.

Approved for reporting.

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Not approved for reporting.

Date of Decision August 3, 2005

Initial of Judge

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IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL.

Writ Petition No. 1635 (S/S) of 2004

Rama Shankar Singh
Aged about 58 years
Son of Sri late Sri Raghu Nath Singh,
Resident of 651 /2, Chakeri,
Pant Nagar,
District - Udham Singh Nagar. **.....Petitioner.**

V e r s u s.

1. State of Uttaranchal through Secretary, Agriculture, Government of Uttaranchal, Dehradun.

2. Vice Chancellor, G.B. Pant University of Agriculture and Technology, Pant Nagar, District- Udham Singh Nagar.

3. Dean, Student Welfare, G.B. Pant University of Agriculture and Technology, Pant Nagar, District - Udham Singh Nagar.

.....Respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri B.D. Upadhyay, learned counsel for the petitioner, learned standing counsel, who has accepted notices on behalf of respondent no. 1 and Sri Rajendra Dobhal, who has accepted notices on behalf of respondents no. 2 and 3.

By means of this writ petition, the petitioner, who was a number of Non Teaching Staff, of G.B. Pant University of Agriculture and Technology, District - Udham Singh Nagar (for short "University"), has prayed to issue a writ in the nature Certiorari to call for the record of the case and quash

the order dated 20.12.2004 passed by respondent no. 3 – Dean, Student Welfare, University.

By order dated 20.12.2004, respondent no. 3 has issued a notice to the petitioner to hand over the charge of the Hostel by December 25, 2004 so that the order of retirement of the petitioner may be implemented on 31.12.2004 which is the date of retirement of the petitioner after completing the age of 58 years.

The submission of the petitioner is that he was initially appointed as Food Manager in the University Canteen on adhoc basis on 18.12.1971. By order dated 17.04.1972 passed by the Vice Chancellor of the University the petitioner was appointed on the said post on regular basis. The services of the petitioner are governed by the U.P. Agricultural Universities Act, 1958 and the Statutes made thereunder. At the time, when the petitioner entered into the services of the university as per condition No. 6 of the Chapter 25 of the Statute the age of retirement was 60 year. Condition No. 6 of Chapter 25 of the Statute is reproduced as under :

6. Age of Retirement

The age of superannuation for all classes of employees of the University shall be 60 years, provided that the appointing authority shall have the power to extended age of superannuation upto the age of 62 years, in exceptional circumstances, subject to the following conditions:

(a). That the work of the employee has been excellent / outstanding during the past five years.

(b). That he is found to be medically fit each year.

(c). That his services are useful to the University.

Chapter 25 of the statue was amended on 12.11.1993 regarding age of superannuation and inserted in the

Institution. The new provision which was inserted is reproduced as under:

6. Age of Retirement

The age of Superannuation for the employee of the University shall be as follow:

(i) For the employees who are appointed before 01.01.1984 and who opt for the existing University contributory fund, the age of superannuation shall be 60 years.

(ii) For those employees who are appointed before 01.01.1984 and who in accordance with GO No. 1009/12.8.400 (19)/84 dated 10.09.1984 and GO No. 4026/12.8.400 (19)/84 dated 10.12.1984 opt for the benefits of pension and general provident fund, the age of superannuation shall be 58 years.

(iii) For those employees who are appointed before 01.01.1984 and who in accordance with GO No. 1009/12.8.400 (19)/84 dated 10.09.1984 and GO No. 4026/12.8.400 (19)/84 dated 10.12.1984 opt for the benefits of pension, family pension and general provident fund, the age of superannuation shall be 60 years.

(iv) For those employees who are appointed on or after 01.01.1984 the age of retirement shall be 58 years or 60 years as per option exercised by then in accordance with GO No. 1009/12.8.400 (19)/84 dated 10.09.1984. and GO No. 4026/12.8.400 (19)/84 dated 10.12.1984. Provided that if the date of superannuation of teacher does not fall on June 30, the teacher shall continue in service till the end of academic session i.e. June 30, following and will be treated on re-employment for the date of superannuatioin till June 30 following provided further that if the date of superannuation of an

employee falls due on any date during the currency of the month, then such employee shall retire on the last date of the respective month.

The petitioner opted for the benefit of pension, death cum retirement, gratuity, family pension and GPF. The said benefit was granted under the amended Statute to those employees who will opt for retirement on completing the age of 58 years. The petitioner had opted for retirement on 16.03.1985 at the age of 58 year on the basis of Government Order dated 10.12.1984. The provision of the aforesaid Government Order dated 10.12.1984 were incorporated in the Institute by way of amendment on 12.11.1993. Learned counsel for the petitioner has submitted that State Government has issued a Government Order dated 25.08.1999 by which the teaching as well as Non Teaching Staff were permitted to change the option of retirement submitted by them earlier. The petitioner, who was going to be retired on 31.12.2004, made an application to the Vice Chancellor on 24.12.2004 for change of option and requested that he may be retired after completing the age of 60 years. Since no action has been taken by the university on the petitioner's application, petitioner approached this court by filing the present writ petition and this court on 29.12.2004 directed the respondent to decide the representation of the petitioner dated 24.12.2004 within a period of 15 days. The submission of the petitioner is that respondents have extended the benefit of the Government Order to various employees of the university and permitted them to change their options but petitioner has been deprived by the respondents.

In para 10 of the writ petition, he made specific averments that there are two employees namely Sri B. Gangopadhyay and Sri Lalit Shah, who also opted earlier for their retirement at the age of 58 years in accordance with amended statute and their retirement were also due on 21.12.2004. They have submitted their applications for changing their option regarding age of retirement and they were permitted to change their option. Petitioner has also annexed the order passed by the Additional Secretary, Government of Uttaranchal dated 21.12.2004 by which Sri B. Gangopadhyay and Sri Lalit Shah were permitted to change their options.

The contention of the petitioner is that similarly situated persons have been granted permission, however, in the case of petitioner he has been deprived of the opportunity by the respondents, thus, it is a case of discrimination. The University has filed a counter affidavit. In para 10 of the counter affidavit it is submitted that Sri B. Gangopadhyay and Sri Lalit Shah applied for change in their options for retirement from 58 years to 60 years well in advance accordingly their requests were sent to the State Government for consideration and the State Government vide order dated 21.12.2004 permitted them to change their option for retirement from 58 years to 60 years. So far as the petitioner is concerned he made a request only on 24.10.2004 just a week ahead of age of retirement. 25 and 26 of December, happened to be holiday and Sunday, the university as well as the offices of the State Government were closed. There was not ample time for considering the request of the petitioner. It is further stated in the counter affidavit that the petitioner instead of waiting the outcome of

his request, preferred to file a writ petition on 28.12.2004 on which date this court was pleased to direct the respondents to dispose of the representation of the petitioner, vide order dated 29.12.2004.

Para 11 of the counter affidavit filed by the State Government is the repetition of the averment made by the university in their counter affidavit. Para 11 of the State Government's counter affidavit is reproduced as under:

"This is reply to the contents of para no. 11 of the writ petition, it is stated here that the petitioner, instead of requesting for change of option well in time, made request at the verge of retirement on 24.12.2004 i.e. just a week a head of the date of retirement. During this period 25, and 26th December, 2004 happened to be holiday and Sunday. As a result the University and the State Government offices were closed. AS such there was not ample time for considering the request of the petitioner. Hon'ble Court was pleased to direct to dispose of the request of the petitioner vide order dated 29.12.2004. Accordingly, the request of the petitioner has been considered and it was observed that as the request was made at the verge of retirement and the petitioner has been retired and relieved as per his option, hence, any action on representation of the petitioner will cause serious administrative problems for the State Government."

The contents of para 13 of the counter affidavit filed by the State Government are self contradictory. On the one hand it is submitted by the State Government that the petitioner had opportunity to change his option after approval of the State Government. Had he submitted his request well in time, instead of submitting application at the very verge of his retirement, the opportunity to change the option was there. On the other hand, it is stated that once the

option rendered cannot be changed, unless otherwise permitted by the State Government as has been envisaged in Pension Government Orders. No such Government Order as alleged has been either referred or annexed by the respondents with counter affidavit.

It is not disputed that Government Order dated 25.08.1999 permits the employees of the Universities to change their options submitted by them earlier. So far as submission made by the learned counsel for the respondents that since the petitioner has made a request just a week ahead from the date of his retirement and during this period 25 and 26 of December, 2004 happened to be holiday and Sunday. Respondent did not have ample time for considering the request of the petitioner. I do not find any force in the submission of the Learned counsel for the respondents. It is true that the petitioner should have made a request to the Authorities well in time but the Government Order which was issued on 25.08.1999 no where states that the request for change in option should be made within a prescribed time. In fact the Government has not communicated any decision in respect of the petitioner's representation for change in option till date. It is only from the counter affidavit petitioner came to know that State Government is not inclined to grant the benefit of the Government Order dated 25.08.1999 to the petitioner. So far as the University is concerned, Learned counsel for the university has submitted that on receipt of the application from the petitioner the same was forwarded to the State Government and it was State Government who has to take action on the application of the petitioner, as salary or post retirel benefits is to be paid by the State exchequer. I

find force in the submission of the learned counsel for the university, it was the State Government who is responsible to decide the petitioner's representation. Learned counsel for the respondents have further submitted that Government Order dated 25.08.1999 is not applicable to the petitioner. For Ready reference the contents of the Government Order are reproduced as under :

'उपर्युक्त विशय के संबंध में मुझे यह कहने का निर्दे ा हुआ है कि श्री राज्यपाल महोदय, सम्यक विचारोंपरांत यह आदे ा प्रदान करते हैं कि राज्य के वि वविद्यालयों एवं सहायता प्राप्त अ ाासकीय महाविद्यालयों के ि ाक्षकों की सेवानिवृति के एक वर्श पूर्व अर्थात जिस भौक्षिक वर्श में उनकी सेवानिवृति होगी, उसकी पहली जुलाई तक विकल्प परिवर्तन कर सकते हैं, किन्तु ऐसे ि ाक्षणेत्तर कर्मचारी जो 58 वर्श की आयु पर सेवानिवृति का विकल्प देते हैं, को सेवानिवृति के पूर्व तक विकल्प परिवर्तन की सुविधा अनुमन्य होगी । यह व्यवस्था इस भाासनादे ा के जारी होने की तिथि से लागू होगी । मुझे यह भी कहने का निर्दे ा हुआ है कि उक्त विशय से संबंधित पूर्व में जारी भाासनादे ाों के अन्य भार्ते एवं प्रतिबन्ध यथावत रहेगें । कृप्या तद्नुसार आव यक कार्यवाही करने का कश्ट करें । यह आदे ा वित्त विभाग के अ ाासकीय संख्या ई 1–2152/ X –99, दिनांक 19 अगस्त, 99 में प्राप्त उनकी सहमति से जारी किये जा रहे हैं ।'

From the perusal of the above contents it is clear that the Government Order provides benefit to the teachers of universities and the Government Aided Colleges to change the option. According to the Government Order they can change option by first of July, of the year in which year they are going to retire. So far as Non Teaching Staff of the aforesaid institution are concerned according to the Government Order they can change the option till the date on which he is going to retire provided they opt for retirement on completing the age 58 years. Learned counsel for the respondents has submitted that the Government

Order does not permit the Non Teaching Staff to change the option till the date of retirement if they want to change their options to retire after completing the age of 60 years. From the perusal of the aforesaid Government Order the contention of the respondents appears to be correct. But at the same time the Government has permitted the Non Teaching Staff to change the option which they have opted earlier and thus, denying this opportunity to the petitioner, amounts to discrimination. Learned counsel for the petitioner has drawn my attention towards the letter dated 29.01.2005 issued by the Secretary, Government of Uttaranchal, by which this benefit of Government Order dated 25.08.1999 has also been given to one Sri Panna Lal, Chief Accountant of the University, who has been permitted to change his option (Annexure NO. 1 to the Misc. Application No. 936 of 2005). He has also produced a letter of Additional Secretary, Uttaranchal dated 28-02-2005 by which Sri Faruk Ahmad Khan and Sri Shiv Shankar Singh were also permitted to change their option which they have exercised earlier.

For the reasons stated above, order dated 20.12.2004 passed by the respondent no. 3 and order dated 29.01.2005 passed by respondent no. 1 is quashed and respondent no. 1 is directed to decide the representation of the petitioner for change of option in the light of aforesaid observations made in the judgment afresh within a period of two months from the date of production of certified copy of the order.

With this direction the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

August 3, 2005
SKSharma

Writ Petition No. 1635 (SS) of 2004

Hon'ble M.M. Ghildiyal, J.

Review Application No. 105 of 2005

Impleadment Application No. 8446 of 2005

Recall Application No. 8445 of 2005

Heard Sri S.N. Babulkar, Sr. Advocate, assisted by Sri Anil Bisht, learned counsel for the petitioner / applicant, Sri Rajendra Dobhal learned counsel for the respondents no. 2 and 3 and learned standing counsel for respondent no. 1.

Impleadment application is allowed.

In the second line of second last para of order dated 03.08.2005 the words "order dated 29.01.2005 passed by respondent no. 1" be deleted. After deleting the aforesaid words there is no need to review of recall the order dated 03.08.2005.

Review and Recall applications are disposed of accordingly.

(M.M. Ghildiyal, J.)

19.10.2005

S.K.S.